

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In Re: National Hockey League Players' Concussion Injury Litigation	)	MDL Docket No. 14-2551 (SRN/BRT)
	)	
	)	
This Document Relates to Case:	)	
	)	
<i>Montador, v. NHL, et al.</i>	)	
Case No. 0:16-cv-00069-SRN-BRT	)	
	)	
	)	

**DEFENDANTS NATIONAL HOCKEY LEAGUE AND NATIONAL HOCKEY LEAGUE  
BOARD OF GOVERNORS' ANSWER AND AFFIRMATIVE DEFENSES TO  
COMPLAINT AT LAW**

Defendants National Hockey League and National Hockey League Board of Governors (together, "NHL") hereby set forth the following Answer and Affirmative Defenses to Plaintiff's Complaint at Law (the "Complaint"), and demand trial by jury. Except as otherwise expressly set forth below, the NHL denies knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in the Complaint. Any allegation, averment, contention or statement in the Complaint not specifically and unequivocally admitted is denied, including any statement in a heading. The NHL preserves all objections regarding the admissibility of any allegations or statements made in the Complaint or this Answer. The NHL responds to each of the paragraphs of the Complaint as follows:

1. The NHL denies the allegations in paragraph 1, except admits Steven R. Montador ("Montador") signed with the Calgary Flames at the age of 20.
2. The NHL admits the allegations in paragraph 2.

3. The NHL denies the allegations in paragraph 3, including footnote 1, except admits plaintiff cites to hockeyfights.com and Montador participated in fights during certain NHL games in which he played.

4. The NHL denies the allegations in paragraph 4, including footnote 2, except admits Montador was diagnosed with concussions during his NHL career.

5. The NHL denies the allegations in paragraph 5, except admits Montador was diagnosed with concussions during his NHL career. The NHL further denies the allegations in footnote 3 because it lacks knowledge or information sufficient to form a belief as to the allegations contained therein, except admits Montador was diagnosed with a concussion on January 8, 2012, February 7, 2012, and March 27, 2012 and Montador engaged in a fight with Jared Boll on January 10, 2012.

6. The NHL denies the allegations in paragraph 6.

7. The NHL denies the allegations in paragraph 7, except states it lacks knowledge or information sufficient to form a belief as to the allegations regarding Montador's purported symptoms.

8. The NHL admits the allegations in paragraph 8.

9. The NHL denies the allegations in paragraph 9, except, on information and belief, admits the Krembil Neuroscience Centre's Canadian Sports Concussion Project purported to have identified the CTE tauopathy in the brain of Montador. The NHL further denies the allegations and characterizations in footnote 4, except admits news articles have reported that the CTE tauopathy was purportedly found in the brains of former NHL players Reggie Fleming, Bob Probert, Rick Martin and Derek Boogaard, and admits plaintiff selectively and incompletely quotes language attributed to Gary Bettman that appears in news articles.

10. The NHL denies the allegations in paragraph 10.

11. The NHL denies the allegations in paragraph 11.

**RESPONSE TO “THE PARTIES”**

12. The NHL denies the allegations in paragraph 12 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

13. The NHL denies the allegations in paragraph 13 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

14. The NHL denies the allegations in paragraph 14, except admits the NHL is an unincorporated association, organized as a joint venture to operate a professional ice hockey league consisting of thirty-one Member Clubs and the NHL has an office in New York, New York.

15. The NHL denies the allegations in paragraph 15, except admits the Chicago Blackhawks are an NHL franchise located at 1901 W. Madison St., Chicago, IL 60612 and Montador played for the Blackhawks and engaged in on-ice fights while a member of the Blackhawks.

16. The NHL denies the allegations in paragraph 16.

17. The NHL denies the allegations in paragraph 17.

18. The NHL denies the allegations in paragraph 18, except admits NHL players may be subject to fines and suspensions for illegal hits pursuant to the collectively-bargained supplemental discipline process agreed upon by the NHL and NHL Players’ Association (“NHLPA”) and the NHL, through agreements with the NHLPA, has made changes to the playing environment.

19. The NHL denies the allegations in paragraph 19, except admits the NHL and the NHLPA have evaluated and addressed certain matters related to player safety, and have provided related education to active players with respect to those matters.

20. Paragraph 20 states legal conclusions to which no responsive pleading is necessary. To the extent a response is required, the NHL denies the allegations in paragraph 20.

21. The NHL denies the allegations in paragraph 21.

22. The NHL denies the allegations in paragraph 22.

### **RESPONSE TO “COUNT I”**

To the extent Plaintiff re-alleges paragraphs 1-22, the NHL reasserts its answers to those paragraphs.

23. The NHL denies the allegations in paragraph 23, except admits in 1997, the NHL and the NHLPA jointly established and administered a collectively-bargained concussion program for active players.

24. The NHL denies the allegations in paragraph 24, including footnote 5, except admits in 1997, the NHL and the NHLPA jointly established and administered a collectively-bargained concussion program for active players.

25. The NHL denies the allegations in paragraph 25, including footnotes 6 and 7, except admits the NHL and NHLPA have maintained certain information at different points in time about players prior to retirement and the NHL and NHLPA have used video clips of diagnosed concussions in connection with the jointly administered collectively-bargained concussion program for active players.

26. The NHL denies the allegations in paragraph 26, except admits, as part of the collectively-bargained concussion program for active players established by the NHL and the

NHLPA in 1997, concussions that occurred during regular-season NHL games from 1997 through 2004 were recorded and articles have been published and data has been collected pursuant to the concussion program.

27. The NHL denies the allegations in paragraph 27 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

28. The NHL denies the allegations in paragraph 28 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

29. The NHL denies the allegations in paragraph 29 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

30. Paragraph 30 states legal conclusions to which no responsive pleading is necessary. To the extent a response is required, the NHL denies the allegations in paragraph 30.

31. The NHL denies the allegations in paragraph 31.

32. The NHL denies the allegations and characterizations in paragraph 32, including footnote 8, except states footnote 8 appears to quote from a study by Brian Benson titled “*A prospective study of concussions among National Hockey League players during regular season games: the NHL-NHLPA Concussion Program*” (“Benson Study”), which speaks for itself.

33. The NHL denies the allegations and characterizations in paragraph 33, except states this paragraph appears to quote from the Benson Study, which speaks for itself.

34. The NHL denies the allegations and characterizations in paragraph 34, except states this paragraph appears to quote from the Benson Study, which speaks for itself.

35. The NHL denies the allegations and characterizations in paragraph 35.

36. The NHL denies the allegations and characterizations in paragraph 36.

37. The NHL denies the allegations in paragraph 37, except, on information and belief, admits Reggie Fleming died on July 11, 2009 and numerous news articles reported in December 2009 and January 2010 that Boston University School of Medicine Center for the Study of Traumatic Encephalopathy (“BUSM”) purported to have identified the CTE tauopathy for the first time in a former hockey player in Reggie Fleming following his death.

38. The NHL denies the allegations in paragraph 38, except, on information and belief, admits Bob Probert died on July 5, 2010 and numerous news articles in March 2011 reported that BUSM purported to have identified the CTE tauopathy in Bob Probert following his death. The NHL denies the allegations in the second sentence of paragraph 38 because plaintiff fails to identify a source for the purported quotes plaintiff attributes to the NHL.

39. The NHL denies the allegations in paragraph 39 except, on information and belief, admits Derek Boogaard died on May 13, 2011, Rick Rypien died on August 15, 2011 and Wade Belak died on August 31, 2011. Further, on information and belief, the NHL admits numerous news articles in December 2011 reported that BUSM purported to have identified the CTE tauopathy only in Derek Boogaard. The NHL denies the allegations in the second sentence of paragraph 39 because plaintiff fails to identify a source for the purported quotes plaintiff attributes to the NHL.

40. The NHL denies the allegations in paragraph 40. The NHL further denies the allegations in footnote 9, except admits plaintiff selectively and incompletely quotes language attributed to Gary Bettman that appears in news articles.

41. The NHL denies the allegations in paragraph 41.

42. The NHL denies the allegations in paragraph 42.

43. The allegation in paragraph 43 that the NHL “knew, or should have known” about Montador’s state of mind states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 43.

44. The allegation in paragraph 44 that the NHL “knew, or should have known” about alleged information states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the allegations in the first sentence of paragraph 44. The second sentence of paragraph 44 states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies the allegations in the second sentence of paragraph 44.

45. Paragraph 45 states legal conclusions to which no responsive pleading is necessary. To the extent a response is required, the NHL denies the allegations in paragraph 45.

46. Paragraph 46 states legal conclusions to which no responsive pleading is necessary. To the extent a response is required, the NHL denies the allegations in paragraph 46. The NHL further denies the allegations in footnote 10, except admits plaintiff selectively and incompletely quotes language from NHL Deputy Commissioner Daly’s 2014 statement before the House of Representatives Committee on Energy and Commerce, Subcommittee on Commerce, regarding concussions in sports and refers the Court to Commissioner Daly’s complete testimony for its complete and accurate contents and context.

47. The allegation in paragraph 47 that the NHL was “in breach of its duty” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 47.

48. The allegation in paragraph 48 that the NHL was “in breach of its duty” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 48.

49. The allegation in paragraph 49 that the NHL was “in further breach of its duty” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 49, including each subpart.

50. The NHL denies the allegations in paragraph 50.

51. The NHL denies the allegations in paragraph 51.

52. The NHL denies the allegations in paragraph 52 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein, except states that plaintiff brings a claim pursuant to 755 ILCS 5/27-6.

The NHL admits Montador demands judgment and denies he is entitled to any relief.

### **RESPONSE TO “COUNT II”**

To the extent Plaintiff re-alleges paragraphs 1-22, the NHL reasserts its answers to those paragraphs.

53. The NHL denies the allegations in paragraph 53.

54. The NHL denies the allegations in paragraph 54.

55. The NHL denies the allegations and characterizations in paragraph 55. The NHL further denies the allegations and characterizations in footnote 11, which references a news article purporting to quote portions of a statement Commissioner Gary Bettman made in 2011 and denies plaintiff’s characterization of that statement.



56. The NHL denies the allegations in paragraph 56.

57. The NHL denies the allegations and characterizations in paragraph 57, including footnote 12, except admits plaintiff selectively and incompletely quotes from a document produced by the NHL in *In re National Hockey League Players' Concussion Injury Litigation*, MDL No. 2551 (the "MDL"), starting at Bates Number NHL0015999.

58. The NHL denies the allegations in paragraph 58.

59. The allegation in paragraph 59 that the NHL was "negligent" states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 59.

60. The NHL denies the allegations in paragraph 60, except admits plaintiff selectively and incompletely quotes language that has been attributed to Dr. Robert Cantu in news articles.

61. The allegation in paragraph 61 that the NHL "knew, or should have known" about alleged evidence states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 61.

62. The NHL denies the allegations in paragraph 62.

63. The NHL denies the allegations in paragraph 63.

64. The NHL denies the allegations in paragraph 64.

65. The NHL denies the allegations in paragraph 65.

66. The NHL denies the allegations in paragraph 66, except, on information and belief, admits two members of Ontario's provincial government asked Mr. McMurtry to investigate "violence" occurring in an Ontario Hockey Association Juniors game and Mr.

McMurtry interviewed some NHL players in creating his report. The NHL denies the allegations and characterizations in the third sentence of paragraph 66.

67. The NHL denies the allegations in paragraph 67.

68. The NHL denies the allegations in paragraph 68 because plaintiff appears to reference an unidentified source that purports to quote Bobby Hull, and the NHL is therefore without knowledge or information sufficient to form a belief as to the truth of the allegations therein. The NHL denies the remaining allegations and characterizations in paragraph 68.

69. The NHL denies the allegations in paragraph 69, except admits in the 1980s there was approximately one fight for every game played.

70. The NHL denies the allegations and characterizations in paragraph 70, except admits plaintiff quotes from a 1986 *Sports Illustrated* article.

71. The NHL denies the allegations and characterizations in paragraph 71, including footnote 13, except admits plaintiff selectively and incompletely quotes from a document produced by the NHL in the MDL, starting at Bates Number NHL0015999.

72. The NHL denies the allegations and characterizations in paragraph 72, including footnote 14, except admits plaintiff quotes from a book by John Branch about Derek Boogaard.

73. The NHL denies the allegations in paragraph 73.

74. The NHL denies the allegations in paragraph 74, including as applied to each subpart in paragraph 74. The NHL further denies the allegations in subparts (a), (b), (c) and (f). The NHL denies the allegations in subpart (e) because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein. The NHL denies the allegations in subpart (g), except admits the NHL and NHLPA jointly license Electronic Arts to develop and publish videogames, including *NHL 14*, bearing the NHL and Club logos and

certain player likenesses, and admits, on information and belief, that these video games portray all aspects of NHL hockey as currently played as realistically as advances in video game technology allow and that EA marketed and promoted *NHL 14* and the marketing materials speak for themselves. The NHL further denies the allegations in subpart (d), except admits at certain times, the NHL Network has produced the weekly program referenced in subpart (d).

75. The allegation in paragraph 75 that the NHL was “negligent” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 75.

76. The NHL denies the allegations in paragraph 76.

77. The NHL denies the allegations and characterizations in paragraph 77, including footnote 15, except admits plaintiff selectively and incompletely characterize a document produced by the NHL in the MDL, starting at Bates Number NHL0029626.

78. The NHL denies the allegations in paragraph 78.

79. The NHL denies the allegations in paragraph 79.

80. The NHL denies the allegations in paragraph 80.

81. The NHL denies the allegations in paragraph 81.

82. The allegation in paragraph 82 that the NHL was in “breach” of its “duties” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 82.

83. The allegation in paragraph 83 that the NHL “breached its duty” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 83.

84. The allegation in paragraph 84 regarding the NHL's purported "breaches of its duties" states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 84.

85. The NHL denies the allegations in paragraph 85.

86. The NHL denies the allegations in paragraph 86 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein, except states that plaintiff brings a claim pursuant to 755 ILCS 5/27-6.

The NHL admits Montador demands judgment and denies he is entitled to any relief.

### **RESPONSE TO "COUNT III"**

To the extent Plaintiff re-alleges paragraphs 1-22, the NHL reasserts its answers to those paragraphs.

87. The NHL denies the allegations in paragraph 87, except admits in 1997, the NHL and the NHLPA jointly established and administered a collectively-bargained concussion program for active players.

88. The NHL denies the allegations in paragraph 88, including footnote 16, except admits in 1997, the NHL and the NHLPA jointly established and administered a collectively-bargained concussion program for active players.

89. The NHL denies the allegations in paragraph 89, including footnotes 17 and 18, except admits the NHL and NHLPA have maintained certain information at different points in time about players prior to retirement and the NHL and NHLPA have used video clips of diagnosed concussions in connection with the jointly administered collectively-bargained concussion program for active players.

90. The NHL denies the allegations in paragraph 90, except admits, as part of the collectively-bargained concussion program for active players established by the NHL and the NHLPA in 1997, concussions that occurred during regular-season NHL games from 1997 through 2004 were recorded and articles have been published and data has been collected pursuant to the concussion program.

91. The NHL denies the allegations in paragraph 91 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

92. The NHL denies the allegations in paragraph 92.

93. The NHL denies the allegations in paragraph 93 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

94. Paragraph 94 states legal conclusions to which no responsive pleading is necessary. To the extent a response is required, the NHL denies the allegations in paragraph 94.

95. The NHL denies the allegations in paragraph 95.

96. The NHL denies the allegations and characterizations in paragraph 96, including footnote 19, except states footnote 19 appears to quote from the Benson Study, which speaks for itself.

97. The NHL denies the allegations and characterizations in paragraph 97, except states this paragraph appears to quote from the Benson Study, which speaks for itself.

98. The NHL denies the allegations and characterizations in paragraph 98, except states this paragraph appears to quote from the Benson Study, which speaks for itself.

99. The NHL denies the allegations and characterizations in paragraph 99.

100. The NHL denies the allegations and characterizations in paragraph 100.

101. The NHL denies the allegations in paragraph 101, except, on information and belief, admits Reggie Fleming died on July 11, 2009 and numerous news articles reported in December 2009 and January 2010 that BUSM purported to have identified the CTE tauopathy for the first time in a former hockey player in Reggie Fleming following his death.

102. The NHL denies the allegations in paragraph 102, except, on information and belief, admits Bob Probert died on July 5, 2010 and numerous news articles in March 2011 reported that BUSM purported to have identified the CTE tauopathy in Bob Probert following his death. The NHL denies the allegations in the second sentence of paragraph 102 because plaintiff fails to identify a source for the purported quotes plaintiff attributes to the NHL.

103. The NHL denies the allegations in paragraph 103, except, on information and belief, admits Derek Boogaard died on May 13, 2011, Rick Rypien died on August 15, 2011 and Wade Belak died on August 31, 2011. Further, on information and belief, the NHL admits numerous news articles in December 2011 reported that BUSM purported to have identified the CTE tauopathy only in Derek Boogaard. The NHL denies the allegations in the second sentence of paragraph 103 because plaintiff fails to identify a source for the purported quotes plaintiff attributes to the NHL.

104. The NHL denies the allegations in paragraph 104. The NHL further denies the allegations in footnote 20, except admits plaintiff selectively and incompletely quotes language attributed to Gary Bettman that appears in news articles.

105. The NHL denies the allegations in paragraph 105.

106. The NHL denies the allegations in paragraph 106.

107. The allegation in paragraph 107 that the NHL “knew, or should have known” about Montador’s state of mind states a legal conclusion to which no responsive pleading is

necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 107.

108. The allegation in paragraph 108 that the NHL “knew, or should have known” about alleged information states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the allegations in the first sentence of paragraph 108. The second sentence of paragraph 108 states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies the allegations in the second sentence of paragraph 108.

109. Paragraph 109 states legal conclusions to which no responsive pleading is necessary. To the extent a response is required, the NHL denies the allegations in paragraph 109.

110. Paragraph 110 states legal conclusions to which no responsive pleading is necessary. To the extent a response is required, the NHL denies the allegations in paragraph 110. The NHL further denies the allegations in footnote 21, except admits plaintiff selectively and incompletely quotes language from NHL Deputy Commissioner Daly’s 2014 statement before the House of Representatives Committee on Energy and Commerce, Subcommittee on Commerce, regarding concussions in sports and refers the Court to Commissioner Daly’s complete testimony for its complete and accurate contents and context.

111. The allegation in paragraph 111 that the NHL was “in breach of its duty” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 111.

112. The allegation in paragraph 112 that the NHL was “in breach of its duty” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 112.

113. The allegation in paragraph 113 that the NHL was “in further breach of its duty” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 113, including each subpart.

114. The allegation in paragraph 114 that the NHL “breache[d] its duties” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 114.

115. The NHL denies the allegations in paragraph 115 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

116. The NHL denies the allegations in paragraph 116 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein, except states that plaintiff brings a claim pursuant to 755 ILCS 5/27-6.

The NHL admits Montador demands judgment and denies he is entitled to any relief.

#### **RESPONSE TO “COUNT IV”**

To the extent Plaintiff re-alleges paragraphs 1-22, the NHL reasserts its answers to those paragraphs.

117. The NHL denies the allegations in paragraph 117.

118. The NHL denies the allegations in paragraph 118.



119. The NHL denies the allegations and characterizations in paragraph 119. The NHL further denies the allegations and characterizations in footnote 22, which references a news article purporting to quote portions of a statement Commissioner Bettman made in 2011 and denies plaintiff's characterization of that statement.

120. The NHL denies the allegations in paragraph 120.

121. The NHL denies the allegations and characterizations in paragraph 121, including footnote 23, except admits plaintiff selectively and incompletely quotes from a document produced by the NHL in the MDL, starting at Bates Number NHL0015999.

122. The NHL denies the allegations in paragraph 122.

123. The allegation in paragraph 123 that the NHL was "negligent" states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 123.

124. The NHL denies the allegations in paragraph 124, except admits plaintiff selectively and incompletely quotes language that has been attributed to Dr. Robert Cantu in news articles.

125. The allegation in paragraph 125 that the NHL "knew, or should have known" about alleged evidence states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 125.

126. The NHL denies the allegations in paragraph 126.

127. The NHL denies the allegations in paragraph 127.

128. The NHL denies the allegations in paragraph 128.

129. The NHL denies the allegations in paragraph 129.

130. The NHL denies the allegations in paragraph 130, except, on information and belief, admits two members of Ontario's provincial government asked Mr. McMurtry to investigate "violence" occurring in an Ontario Hockey Association Juniors game and Mr. McMurtry interviewed some NHL players in creating his report. The NHL denies the allegations and characterizations in the third sentence of paragraph 130.

131. The NHL denies the allegations in paragraph 131.

132. The NHL denies the allegations in paragraph 132 because plaintiff appears to reference an unidentified source that purports to quote Bobby Hull, and the NHL is therefore without knowledge or information sufficient to form a belief as to the truth of the allegations therein. The NHL denies the remaining allegations and characterizations in paragraph 132.

133. The NHL denies the allegations in paragraph 133, except admits in the 1980s there was approximately one fight for every game played.

134. The NHL denies the allegations and characterizations in paragraph 134, except admits plaintiff quotes from a 1986 *Sports Illustrated* article.

135. The NHL denies the allegations and characterizations in paragraph 135, including footnote 24, except admits plaintiff selectively and incompletely quotes from a document produced by the NHL in the MDL, starting at Bates Number NHL0015999.

136. The NHL denies the allegations and characterizations in paragraph 136, including footnote 25, except admits plaintiff quotes from a book by John Branch about Derek Boogaard.

137. The NHL denies the allegations in paragraph 137.

138. The NHL denies the allegations in the opening clause of paragraph 138, including as applied to each subpart in paragraph 138. The NHL further denies the allegations in subparts (a), (b), (c) and (f). The NHL denies the allegations in subpart (e) because it is without

knowledge or information sufficient to form a belief as to the truth of the allegations therein.

The NHL denies the allegations in subpart (g), except admits the NHL and NHLPA jointly license Electronic Arts to develop and publish video games, including *NHL 14*, bearing the NHL and Club logos and certain player likenesses, and admits, on information and belief, these video games portray all aspects of NHL hockey as currently played as realistically as advances in video game technology allow, and EA marketed and promoted *NHL 14* and the marketing materials speak for themselves. The NHL denies the allegations in subpart (d), except admits at certain times, the NHL Network has produced the weekly program referenced in subpart (d).

139. The allegation in paragraph 139 that the NHL was “negligent” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 139.

140. The NHL denies the allegations in paragraph 140.

141. The NHL denies the allegations and characterizations in paragraph 141, including footnote 26, except admits plaintiff selectively and incompletely characterize a document produced by the NHL in the MDL, starting at Bates Number NHL0029626.

142. The NHL denies the allegations in paragraph 142.

143. The NHL denies the allegations in paragraph 143.

144. The NHL denies the allegations in paragraph 144.

145. The NHL denies the allegations in paragraph 145.

146. The allegation in paragraph 146 that the NHL was in “breach” of its “duties” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 146.

147. The allegation in paragraph 147 that the NHL “breached its duty” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 147.

148. The allegation in paragraph 148 regarding the NHL’s purported “negligence and conscious disregard” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 148.

149. The allegation in paragraph 149 regarding the NHL’s purported “breaches of its duties” states a legal conclusion to which no responsive pleading is necessary. To the extent a response is required, the NHL denies that allegation. The NHL denies the remaining allegations in paragraph 148. The NHL denies the remaining allegations in paragraph 149.

150. The NHL denies the allegations in paragraph 150 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

151. The NHL denies the allegations in paragraph 151 because it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein, except states that plaintiff brings a claim pursuant to 755 ILCS 5/27-6.

The NHL admits Montador demands judgment and denies he is entitled to any relief.

#### **PREAMBLE TO AFFIRMATIVE AND OTHER DEFENSES**

The NHL reserves the right to rely upon any of the following or additional defenses to claims asserted by plaintiff to the extent that such defenses are supported by information developed through discovery or evidence at trial and thus reserves the right to amend its Answer and Defenses. By asserting the following affirmative defenses, the NHL does not allege or admit it has the burden of proof or the burden of persuasion with respect to any of these matters:

### **FIRST DEFENSE**

Plaintiff may have failed to state a claim upon which relief can be granted.

### **SECOND DEFENSE**

Because plaintiff is not completely diverse from the NHL, plaintiff cannot base subject matter jurisdiction on diversity under 28 U.S.C. § 1332. Nevertheless, this Court has original jurisdiction of this action under 28 U.S.C. § 1331 because the claims in the Complaint arise under the laws of the United States, specifically Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (“Section 301”). Section 301 requires the application of federal substantive law and completely preempts and displaces entirely any state cause of action. It does not matter that a lawsuit purports to assert tort claims under state law instead of contract claims. If the claims are founded directly on rights created by collective bargaining agreements or are substantially dependent on analysis of a collectively-bargained agreement, they are federal claims governed by Section 301.

### **THIRD DEFENSE**

Plaintiff’s claims are preempted, in whole or in part, under federal labor law and/or are required to be submitted to arbitration or for failure to exhaust his remedies under applicable collective bargaining agreements governing the terms and conditions of his employment as an NHL Player.

### **FOURTH DEFENSE**

Plaintiff may be barred, in whole or in part, by the exclusive remedy provisions of various states’ applicable Workers’ Compensation statutes.

**FIFTH DEFENSE**

Plaintiff's claims may be barred, in whole or in part, because to the extent plaintiff seeks to impose tort liability on defendants in connection with defendants' promotion and marketing of the game of hockey, such conduct is protected speech under the First Amendment to the United States Constitution, thereby precluding tort liability.

**SIXTH DEFENSE**

Plaintiff may be barred by the applicable statutes of limitations and/or repose.

**SEVENTH DEFENSE**

Plaintiff has not sustained any injury or damages compensable by law.

**EIGHTH DEFENSE**

Plaintiff's claims may be barred, in whole or part, from recovery due to his contributory and/or comparative negligence.

**NINTH DEFENSE**

Plaintiff's claims may be barred, in whole or in part, from recovery due to his assumption of the risk.

**TENTH DEFENSE**

Any injury or damage sustained by plaintiff was caused, in whole or in part, by plaintiff's own lack of due care and fault, and/or by pre-existing conditions; and/or the lack of due care or fault of others for whom the NHL has no responsibility or control.

**ELEVENTH DEFENSE**

Plaintiff's claims may be barred because plaintiff's injuries were actually or proximately caused, in whole or in part, by the intervening or superseding conduct of independent third parties and non-parties to this action or events that were extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the NHL's conduct or control.

**TWELFTH DEFENSE**

Plaintiff's claims may be barred, in whole or in part, because plaintiff did not rely to his detriment upon any statement or alleged omission by the NHL in electing to play hockey.

**THIRTEENTH DEFENSE**

Plaintiff's claims may be barred, in whole or in part, from recovery because he has made statements or taken actions that estop him from asserting his claims or constitute a waiver of his claims.

**FOURTEENTH DEFENSE**

An award of punitive damages against the NHL would amount to the deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments of the United States Constitution, the Eighth Amendment of the United States Constitution, and in violation of the constitutions of the various states that govern the claims in plaintiff's Complaint. The criteria for determining whether and what amount of punitive damages may be awarded are impermissibly vague, imprecise, and inconsistent, and for these and other reasons tend to promote the award of excessive damages verdicts, and are therefore not in accord with, and are

antagonistic to, the protections of due process and the other aforementioned constitutional provisions.

**FIFTEENTH DEFENSE**

Plaintiff may have failed to mitigate his damages.

**SIXTEENTH DEFENSE**

To the extent plaintiff has settled some or all of his claims, if any, against other parties, or potential alleged joint tortfeasors, then the NHL is entitled a credit in the amount of said settlement(s) and/or the amount of the settling parties' allocated percentage of fault.

**SEVENTEENTH DEFENSE**

Plaintiff may be barred, in whole or in part, from recovery, on the ground that he is subject to the defense of accord and satisfaction.

**EIGHTEENTH DEFENSE**

Plaintiff's damages, if any, may be barred, limited, or offset in the amount of any reimbursement received by plaintiff as a result of any workers compensation proceeding, insurance or other health benefits plan, or any amounts paid by any insurance or other health benefits plan.

**NINETEENTH DEFENSE**

Plaintiff's claims may be barred because of plaintiff's failure to join necessary and indispensable parties.



**TWENTIETH DEFENSE**

Any fraud-based claims are barred for failure to plead them with the particularity required under Rule 9(b) of the Federal Rules of Civil Procedure.

**TWENTY-FIRST DEFENSE**

Plaintiff's claims may be barred because the NHL, as an unincorporated association of its Member Clubs, is not a proper entity to assert tort claims against based on applicable state law.

**TWENTY-SECOND DEFENSE**

Plaintiff's claims may be barred, in whole or in part, from recovery, due to spoliation of evidence.

**TWENTY-THIRD DEFENSE**

Plaintiff may be barred, in whole or in part, from recovery by the doctrine of laches.

**JURY TRIAL DEMANDED**

The NHL hereby demands a trial by jury on all issues so triable.

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